

Thus, for the 1995-96 school year only, an LEA that does not have adequate poverty data on private school children must apply the poverty percentage of each participating public school attendance area to the number of private school children in that area. For example, if a participating public school area has 50 percent poverty and 100 children who reside in that area attend private schools, 50 private school children would be deemed to be poor and thus generate Title I funds. For school years after 1995-96, actual poverty data (or a reasonable estimate based on an adequate sample) will be required.

The Secretary realizes that there may be issues about the adequacy of the poverty data available for private school children. These issues need to be resolved in consultation with private school officials. Because sampling would be permitted, an LEA would not need to have actual data on each private school child residing in a participating school attendance area for the data to be adequate. Moreover, to allay privacy concerns, an LEA does not need to collect or maintain the names of individual poor children attending private schools or signatures of their parents or guardians. In determining the adequacy of the data, an LEA should take into consideration factors such as the reliability of the data, the response rate, and whether the data are comparable to the data on public school children.

The Secretary urges public and private school officials to continue their efforts to collect actual poverty data for the 1995-96 school year, particularly in light of the flexibility to use sampling. To facilitate these efforts, SEAs and LEAs may wish to extend deadlines and amend applications, as necessary. Assuming adequate poverty data on private school children are not available for the 1995-96 school year, efforts to collect actual data should continue, because the alternative method requiring an LEA to apply the poverty rate for each public school attendance area to the private school children in that area will be allowed only for the 1995-96 school year.

Changes: Several changes have been made. The Secretary has added § 200.28(a)(2)(i)(B)(2) to make clear that an LEA may use data from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. The Secretary has also added paragraph (a)(2)(ii), which provides that, if complete actual poverty data on private school children are not available, an LEA may extrapolate from actual data on a representative sample

of private school children the number of poor private school children. Finally, the Secretary has added paragraph (a)(2)(iii) to require, for the 1995-96 school year only, an LEA that does not have adequate data on the actual number of private school children from low-income families under either paragraph (a)(2)(i) or (ii) to derive the number of those children by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

Comment: Several commenters recommended that § 200.28 of the regulations permit an LEA, in order to provide services to eligible private school children, to reserve an amount of funds that is proportionate to the number of children from low-income families who attend private school in the entire LEA compared to the number of children from low-income families who attend public schools in the LEA.

Discussion: The clear meaning of the statute requires an LEA to allocate Title I funds based on the number of poor private school children residing in participating public school attendance areas. Under section 1113(c)(1) of Title I, funds are allocated to participating school attendance areas "on the basis of the total number of children from low-income families in each area or school." The "total number of children from low-income families" includes both poor public and private school children residing in each public school attendance area. Consistent with this provision, section 1120(a)(4) of Title I requires expenditures for services to eligible private school children to be "equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools (emphasis added)." Determining the amount of funds available for services to private school children at the LEA level would be inconsistent with allocating funds to participating areas based on the number of poor public and private school children in each area.

Changes: None.

Comment: One commenter interpreted § 200.28 of the regulations to require only that the allocation of funds to school attendance areas be based on the number of children from low-income families from both public and private schools. According to the commenter, § 200.28 would allow an LEA to select and rank eligible attendance areas or schools based only on the number of public school poor children.

Discussion: Section 200.28 deals only with the allocation of funds to participating school attendance areas and schools and makes clear that funds must be allocated on the basis of the total number of children—public and private—from low-income families in each area or school. Thus, adequate data on the number of private school children from low-income families in participating school attendance areas is essential. To include numbers of private school children in identifying and selecting eligible school attendance areas and schools, however, would require adequate poverty data on private school children throughout the LEA. Because obtaining these data for the entire LEA may be extremely difficult, an LEA may identify and rank its eligible school attendance areas and schools on the basis of children from low-income families attending public schools only.

Changes: None.

Comment: Several commenters raised the issue of how private school children would be identified as residing in a participating attendance area if an LEA is operating under an open enrollment, a desegregation, or magnet school plan where there are no geographically defined attendance areas. A number of commenters recommended that the regulations allow LEAs to allocate Title I funds for poor private school children based on their relative share of the total population of public and private school children for the LEA as a whole.

Discussion: An LEA operating under an open enrollment, desegregation, or magnet school plan must still offer equitable services to eligible private school children. Determining which private school children are eligible, however, is often very difficult because it is not clear to which public school they would have gone were they not in a private school. Because of the wide variety of open enrollment arrangements, the Secretary was unable to fashion a regulation that would appropriately govern each situation. Rather, the Secretary will assist SEAs and LEAs on a case-by-case basis to design reasonable approaches that will allow for the provision of equitable services for eligible private school children.

Changes: The Secretary has added § 200.10(b)(2) to make clear that an LEA that identifies a school as eligible on the basis of enrollment because the school is operating, for example, under an open enrollment or desegregation plan, must determine an equitable way to identify eligible private school children.

Comment: Several commenters recommended that Title I expenditures

for private school children be set at 85 percent of the Title I amount spent on them in the previous year.

Discussion: The statute does not authorize a hold harmless for services to private school students based on the prior year's expenditures.

Changes: None.

Subpart C—Migrant Education Program

Section 200.40 Program Definitions

Comment: One hundred and sixty-seven letters were received objecting to the proposal to require that, to be a migratory agricultural worker or fisher, temporary or seasonal employment in an agricultural or fishing activity must be a "principal means of livelihood." Most of the commenters on this issue read into the proposed language a requirement that, for a child to qualify for services under the Migrant Education Program (MEP), the child's parents or guardians either must derive the majority of their income from, or spend the majority of their time performing, agricultural or fishing activities. Most of the commenters were concerned that the proposed language imposed a specific recordkeeping burden on migratory workers. Specifically, they believed that, for a child to be determined eligible under the MEP, his/her parent or guardian now would be required to maintain, and produce for inspection by State and local MEP staff, records documenting the percentage of time or income associated with their agricultural or fishing work.

Many commenters also suggested that the proposed language would place an unreasonable burden on local MEP staff, by requiring them to make subjective determinations of eligibility based on review of parents' income or occupational history records. Several commenters noted that these determinations would vary from place to place and from MEP staff member to staff member.

While the majority of commenters suggested eliminating the proposed language, several commenters suggested that the Secretary should clarify the proposed language and/or issue clear guidance on how to determine whether a migratory worker's agricultural or fishing work constitutes "a principal means of livelihood."

Discussion: The commenters have misinterpreted the scope and intent of the proposed language regarding what constitutes "a principal means of livelihood." As noted in the preamble to the NPRM, the Secretary proposed this language to better focus MEP service on children of persons with an actual,

significant dependency on migratory agricultural or fishing work.

The Secretary never intended the proposed language to mean that agricultural or fishing activities had to constitute the principal means of livelihood for a worker. That is to say, this work need not be the only type of work performed by a worker during the year, nor the one which provides the largest portion of income or which employed the worker for a majority of time. Additionally, the Secretary never intended the proposed language to require a worker or his or her family to maintain, or an SEA or operating agency to review, written documentation on income or work history as a condition of determining the eligibility of children for the MEP.

With regard to the concern about the burden the proposed language might place on State and local MEP staff, the Secretary believes that it is necessary for SEAs and operating agencies receiving MEP funds to determine that children eligible for the MEP are those for whom temporary or seasonal employment in an agricultural or fishing activity constitutes an important part of their families' livelihood. However, this determination should be no more difficult than the determinations currently made by State and local MEP staff regarding the reasonableness of other eligibility information provided by a parent or guardian as to work activities and mobility. State and local officials responsible for determining MEP eligibility often rely on oral information from parents, guardians, as well as employers and others regarding a move to seek or obtain seasonal agricultural or fishing employment. State and local MEP staff currently use their best judgment regarding the accuracy of this information, especially in cases where agricultural or fishing work was sought but not found. The Secretary's interpretation of eligibility requirements under the MEP will continue to permit reliance on any credible source, without the need to secure written documentation from a parent or guardian. The Secretary only intends, with this new eligibility requirement, that State and local staff be reasonably assured that, in view of a family's circumstances, it is sensible to conclude that temporary or seasonal employment in an agricultural or fishing activity is one important way of providing a living for the worker and his or her family.

Changes: In order to clarify the meaning of the new language, the Secretary has revised the regulatory definition in § 200.40(f) of the regulations to clarify that the term

"principal means of livelihood" as used in § 200.40 (c) and (e) of the regulations means that "temporary or seasonal employment in an agricultural or fishing activity plays an important part in providing a living for the worker and his or her family." The Secretary will issue guidance regarding how SEAs and their operating agencies may exercise flexibility in the ways in which they identify and recruit migratory children consistent with this regulatory requirement.

Comment: Thirty-four commenters noted that the "principal means of livelihood" language included in the proposed MEP regulatory definitions was not found in the statute. Seven commenters suggested that the inclusion of this language in the regulations would violate the Department's principles for regulating insofar as the proposed language was not absolutely necessary and/or contrary to the intent of the statute to give flexibility to States and local operating agencies in implementing the new statute.

Discussion: The Secretary believes that the proposed language regarding "principal means of livelihood" is a necessary addition to the longstanding definitions of "migratory agricultural worker" and "migratory fisher" and, therefore, conforms to the Department's regulatory principles. Because the existing definitions had been frozen by prior statutes, children have been identified and served as migratory children simply because they moved with or to join a parent or guardian who, though having another full-time occupation, indicated that he or she moved across a school district line to perform, however briefly, an agricultural or fishing activity. ESEA has removed this statutory freeze. Continuing to allow children to be served as migratory children on the basis of a purely technical application of the definition would perpetuate an injustice against those children whose lives are disrupted by moves made because their families are truly dependent, to a significant degree, on temporary or seasonal agricultural or fishing activities. In this way, the Secretary continues to believe that this change in the MEP definitions is absolutely necessary.

Changes: None.

Comment: None.

Discussion: In order to conform to the statutory language, the Secretary has revised the definition of a "migratory child" in § 200.40(d) by replacing the term, "has moved," in subsection (3) with the term, "migrates."

Changes: Section 200.40(d)(3) is changed accordingly.

Comment: None.

Discussion: The second sentence of the definition of a "migratory fisher" in § 200.40(e) notes that the definition also includes a person who resides in a school district of more than 15,000 square miles, and moves a distance of 20 miles or more to a temporary residence to engage in a fishing activity. As purely an editorial clarification, the Secretary has revised this sentence to read, "This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood."

Changes: Section 200.40(e) is changed accordingly.

Section 200.41 Use of Program Funds for Unique Program Function Costs

Comment: Two commenters addressed this section of the proposed regulations. Both commenters agreed that it was appropriate to use program funds to address those administrative functions that are unique to the MEP; however, one commenter questioned why the proposed regulation also mentioned the use of program funds for "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." This commenter suggested deleting the language or providing examples of what these activities might include.

Discussion: The MEP is a State-operated as well as a State-administered program. In cases where it directly operates aspects of the program, rather than having local operating agencies do so, an SEA has to perform the same kind of administrative activities that an LEA carries out when it administers a project under subpart A. While these activities could be described as unique to the nature of the MEP, the Secretary believes deleting the term, which has been in the prior regulations, would create unnecessary confusion about the scope of permissible uses of funds under § 200.41 of the regulations. Instead, the Secretary has decided to make minor modifications to clarify that those "administrative activities * * * that are unique to the MEP" include "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." The list of permissible activities has also been expanded to include an example of this type of administrative activity.

Changes: Section 200.41 is changed accordingly.

Section 200.42 Responsibilities of SEAs and Operating Agencies for Assessing the Effectiveness of the MEP

Comment: Two commenters addressed this section of the proposed regulations. One commenter agreed with the proposed language. The other commenter noted that the schoolwide program requirements in § 200.8 of the regulations do not require the identification of particular children as eligible to participate, and questioned how an operating agency can meet its responsibility under § 200.42 of the regulations to evaluate the effectiveness of how a school within the agency which combines MEP funds in a schoolwide program serves migratory children.

Discussion: The commenter misconstrues the applicable provisions of § 200.8, regarding schoolwide programs. While § 200.8(f)(1) does not require a schoolwide program to identify particular children as eligible to participate (emphasis added), a schoolwide program will have to identify a given child in terms of needs. This is necessary in order for the school to meet other schoolwide program requirements to (1) employ instructional strategies which address the needs of children who are members of the target population of any program whose funds are included in the schoolwide program [§ 200.8(d)(2)(iv)(A)]; and 2) address the identified needs of migratory children specifically, and document how these needs have been met in the schoolwide program [§ 200.8(c)(3)(ii)(B)(1)]. A schoolwide program is also required, under § 200.8(e)(1)(iv)(A)(2), to disaggregate assessment data according to specific categories, including migrant status. In this way, a schoolwide program which includes MEP funds will be able to meet the requirements of § 200.42 to determine the effectiveness of the program for migratory students.

Changes: None.

Section 200.44 Use of MEP Funds in Schoolwide Programs

Comment: Nine comments were received regarding the inclusion of MEP funds in schoolwide programs. Seven of the commenters expressed support for the continued inclusion of the proposed language in § 200.8(c)(3)(ii)(B)(1) of the regulations. As developed through the negotiated rulemaking process, this subsection requires schoolwide programs to (1) first address, in consultation with parents and other representatives, or both, of migratory children, the identified needs of those children that result from the effects of their migratory lifestyle or are needed to

permit them to function effectively in school; and (2) document that services to address those needs have been provided. One commenter expressed concern that the special needs of migratory children will not be addressed in a schoolwide program without a requirement to "identify and document the services that supplemented the regular academic program." Another commenter suggested that the language of § 200.8(c)(3)(ii)(B) of the regulations was too vague and flexible, and would "allow school districts to evade the intentions of Congress."

Discussion: The Secretary continues to believe that the language in § 200.8(c)(3)(ii)(B)(1) of the regulations, as drafted in negotiated rulemaking, provides an adequate safeguard that the special needs of migratory children will be addressed in schoolwide programs. In particular, subsection (1)(B) requires that schoolwide programs document that services have been provided to address the identified needs of migratory children. The Secretary continues to believe that it is neither necessary nor desirable—and, in fact, is contrary to the purpose of schoolwide programs—for schoolwide programs to have a requirement to demonstrate that services provided using Federal funds, e.g. MEP funds, combined under the schoolwide program authority supplement the services regularly provided in that school.

Changes: None.

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

Comment: One commenter indicated that the regulations do not adequately address many of the statutory changes, particularly as they relate to prevention and intervention. The commenter suggests organizing the regulations into State agency and locally operated program categories.

Discussion: In developing regulations for programs authorized by Title I, the Department sought to regulate only where absolutely necessary, and when regulating, to promote flexible approaches to meeting the requirements of the law. The Secretary believes that the statute provides sufficient direction to State agencies (SAs) and local educational agencies (LEAs) operating Part D subpart 1 and 2 programs for children and youth who are neglected, delinquent, or at-risk of dropping out and does not require regulations. The Department, however, is developing more detailed guidance to help SAs and LEAs design programs that meet the

needs of this population. This guidance will be organized to provide guidance related specifically to the Part D, Subpart 1 State agency N or D program and the Subpart 2 local agency program.

Changes: None.

Comment: For the Part D, Subpart 2 local agency program, a commenter asked for clarification about the distinction in funds and services between delinquent and at-risk children and youth. The commenter further asked if LEAs may reserve a portion of their funds for at-risk students who have not been adjudicated delinquent or must LEAs use those funds only for delinquent youth transferring from institutions into the district's schools.

Discussion: LEAs must use a portion of its Title I, Part D, Subpart 2 funds to operate a dropout prevention program for at-risk youth in local schools in the LEA. At the same time, the LEA must also use some of its Subpart 2 funds for programs that will serve children and youth in locally operated correctional facilities and in locally operated institutions or community day programs for delinquent children and youth in accordance with the requirements in section 1425 of Title I.

The statute, however, provides that if more than 30 percent of the children or youth in a local correctional facility or delinquent institution within an LEA do not reside in the LEA after leaving the facility or institution, the LEA is not required to operate a dropout prevention program in a local school.

Changes: None.

Comment: One commenter expressed concern about the low status of "prison education," particularly in his State, where the lack of support for juvenile institutions has reduced both the number and the quality of course offerings and has relegated correctional education to a supplemental or support role. The commenter indicated that there should be more recognition of the status of correctional education and hopes that the Title I program in these institutions will help N or D children and youth attain the high standards expressed in Goals 2000 and State school reform initiatives.

Discussion: The Secretary expects consolidated State plans for ESEA programs or individual State plans for Part D funds to provide an overall plan for meeting the needs of N or D children and youth and, where applicable, youth at-risk of dropping out of school that is integrated with the State's other educational programs.

Changes: None.

Comment: One commenter expressed concern that section 1603 of Title I does not require that the membership of the

State's Committee of Practitioners include a representative from State agencies (SAs) operating N or D institutions.

Discussion: Section 1603 of Title I requires that the Committee of Practitioners review and comment on all proposed rules, regulations, and policies relating to programs authorized in Title I, including Part D. The Secretary expects that a representative from SAs operating Title I N or D programs will be included on the Committee of Practitioners so it can address issues related to the State agency N or D program.

Changes: None.

Comment: A commenter noted that the regulations do not address how an SEA awards Part D, Subpart 2 grants to LEAs with high numbers or percentages of youth residing in locally operated correctional facilities for youth (including institutions and community day programs or schools that serve delinquent children and youth).

Discussion: The SEA has flexibility in establishing the criteria used to determine which LEAs have high numbers or percentages of children and youth in local correctional facilities or institutions and community day programs for delinquent children. Once an SEA determines which LEAs are eligible, the SEA may award Part D, Subpart 2 subgrant to eligible LEAs through a formula or on a discretionary basis.

Changes: None.

Section 200.50 Program Definitions

Comment: One commenter expressed concern that the definition for locally operated correctional facility does not include institutions or community day programs that serve neglected children and that the Part D, Subpart 2 local agency program does not address the educational needs of these neglected children.

Discussion: The specific educational needs of neglected children are met through several Title I programs. The State agency N or D program, authorized in Part D, Subpart 1 of Title I, serves the needs of neglected children in State-operated or supported institutions or community day programs. Part A, section 1113 of Title I requires that an LEA receiving Title I funds reserve funds to meet the educational needs of children in local institutions for neglected children. If the LEA is unable or unwilling to provide services to children in local institutions for neglected children, the State educational agency must reduce the LEA's allocation by the amount generated by the neglected children and

assign those funds to another agency or LEA that agrees to assume educational responsibility for those children.

Changes: None.

Section 200.51 SEA Counts of Eligible Children

Comment: One commenter strongly supported the change requiring the use of enrollment rather than average daily attendance.

Discussion: Section 200.51 of the regulations follows the statute, which requires that counts used for allocating Part D, State agency N or D funds be based on the number of children and youth under aged 21 enrolled in a regular program of instruction for 20 hours per week if in a institution or community day program for N or D children and youth and 15 hours per week if in an adult correctional facility.

Changes: None.

Comment: One commenter objected to requirements in the proposed regulations that State agency N or D allocations be based on counts of children enrolled in a regular program of instruction for 20 hours per week if in an institutions or community day program for N or D children; and only children and youth in institutions with an average length of stay of 30 days or more can be counted. The commenter argued these requirements will result in an under count of the children and youth that State institutions serve and does not take turnover into account.

Discussion: The criteria that children be enrolled in a regular program of instruction for 15 or 20 hours of instruction per week, depending on the type of institution, reflect statutory requirements. The statute, however, addresses the issue of turnover in part by requiring that enrollment be adjusted to take into consideration the relative length of the program's school year.

Although short-term institutions such as detention, diagnostic, and reception centers provide basic education services for youth, the Secretary believes that Title I services are most effective when their duration is longer and is requiring in regulations that the average length of stay in institutions and programs eligible for Title I funds average at least 30 days.

Changes: None.

Subpart E—General Provisions

Section 200.60 Reservation of Funds for State Administration and School Improvement

Comment: One commenter argued that Congress appropriated fiscal year 1995 funds specifically for School Improvement as a limitation or cap on

the amount that could be spent by States for this activity in the same manner that Congress provided funds specifically for State Administration in prior years. According to the commenter, the line item appropriation, therefore, provides the entire amount that may be expended for school improvement activities for 1995-96, and SEAs have no authority to reserve any additional funds for that purpose from their allocations under sections 1002 (a), (c), and (d) of Title I in 1995-96.

Discussion: In the 1995 Appropriations Act (P.L. 103-333), Congress appropriated funds for activities authorized by Title I and specifically provided \$27,560,000 for "program improvement activities." Because the ESEA had not been enacted at the time P.L. 103-333 became law, these funds were not appropriated under the authority in section 1002(f) of Title I. However, legislative history accompanying the 1995 Appropriations Act (Senate Report 318, p. 177) indicates that Congress provided a specific amount for program improvement grants with the knowledge that the Senate ESEA bill, S. 1513, also authorized each State to reserve a portion of its Title I LEA and State agency grants for school improvement. Thus, the Secretary believes that Congress intended to provide funds for school improvement as a separate line item and still allow States to reserve additional funds under sections 1003 (a), (c), and (d) from its LEA and State agency grants.

Changes: None.

Section 200.61 Use of Funds Reserved for State Administration

Comment: One commenter believed § 200.61 of the regulations should be expanded to address the use of funds reserved for school improvement. The commenter recommended that any alternative system established by the State should be addressed in its State plan and thereby subject to peer review. The commenter argued that States may be tempted to use school improvement funds to support SEA staff costs that should otherwise be funded with State Administration funds.

Discussion: The Secretary believes that sections 1116 and 1117 of Title I adequately address how States must use school improvement funds. States are expected to address in individual State plans how they will monitor LEA school improvement activities, provide technical assistance, identify LEAs in need of school improvement assistance, take necessary corrective action, and establish a State school improvement support system.

Changes: None.

Comment: One commenter asked what the phrases "any of the funds" and "general administrative activities" mean in § 200.61 of the regulations.

Discussion: Section 200.61 of the regulations provides that an SEA may use any of the funds it has reserved under § 200.60(a) to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I. This authority, provided under section 1603 of Title I, is very broad and includes activities that the SEA considers necessary to the proper and efficient performance of its duties under Title I. Such activities may, for example, include reviewing plans submitted by LEAs and State agencies, monitoring program activities at the local level, providing technical assistance, and developing rules and policy guidance needed to implement the law.

Changes: None.

Subpart E—General Provisions

Comment: One commenter strongly supported the language in § 200.63 of the regulations concerning the supplement, not supplant requirement and believed that it clarifies the language of the Title I statute. Another commenter suggested that the regulations further clarify section 1120A(b)(1)(B) of Title I pertaining to the exclusion of supplemental State and local funds from supplement, not supplant determinations, given the likelihood of unintended noncompliance in the near future.

Discussion: Although the Title I legislation on the exclusion of supplemental State and local funds from Title I supplement, not supplant and comparability determinations is different from that in the Chapter 1 legislation, the Secretary believes that the statutory language does not need further clarification beyond that contained in § 200.63(c) of the regulations. To the extent additional clarification becomes necessary, the Department will provide it in policy guidance.

Changes: None.

Comment: One commenter suggested that § 200.65 of the regulations include definitions of terms and requirements that are not clearly described in the statute so that wide variation in State and local interpretation does not result. The commenter suggested that States and LEAs need examples or minimum standards that can be used to interpret and measure terms such as "joint development," "comprehensive needs assessment," "adequate progress,"

"high quality," "sufficient," and "compacts".

Discussion: The Secretary believes that including specific definitions of these terms in the regulations would lessen State and local flexibility. To the extent clarification is needed, the Department will include it in policy guidance.

Changes: None.

Comment: One commenter suggested that sections 14401 and 14501 of Title XIV regarding ESEA waivers and maintenance of effort waivers, respectively, appear contradictory; under section 14401, maintenance of effort may not be waived yet under section 14501, the Secretary has the authority to waive maintenance of effort under certain circumstances.

Discussion: Because section 14501 contains specific maintenance of effort provisions, including the authority to waive those provisions under certain circumstances, that section takes precedence over the general waiver provisions in section 14401. Thus, the Secretary may waive maintenance of effort requirements under programs covered by section 14501, if the jurisdiction meets the statutory criteria for a waiver. If a jurisdiction does not meet those criteria or is not covered under section 14501, the Secretary may not waive maintenance of effort under section 14401.

Changes: None.

Comments on Issues Not Addressed in Final Regulations

Comment: One commenter requested that the Secretary specify a date by which an SEA must distribute its plan to its LEAs (suggesting July 1, 1995) and further specify that the draft plan and final plan be made public, stressing that, because of the LEAs' heavy reliance on the SEA plan, it is imperative that LEAs have access to the SEA plan for review prior to the plan becoming final.

Discussion: The Secretary agrees that an SEA must adequately communicate with its LEAs. In fact, the SEA must consult with LEAs, teachers and other school staff, and parents in developing its State plan. Given the variation among States, however, the Secretary does not believe establishing a national "due date" would be appropriate.

Changes: None.

Comment: One commenter recommended that regulations be added to address the provisions of section 1115(b) of Title I that are designed to ensure that students with educational needs are not excluded on the basis of English proficiency, family income, disability, or migrant status. The commenter found that many LEP

students were inappropriately excluded from Chapter 1 participation.

Discussion: Section 1115(b)(2) makes clear that children who are economically disadvantaged, children with disabilities, migrant children, and LEA children are eligible for services under Part A on the same basis as other children selected to receive services. The Secretary does not believe that regulations are needed to enforce this statutory provision.

Changes: None.

Comment: One commenter recommended that the regulations encourage the use of technology to increase learning, parental involvement, and professional development and cited the Conference Report on the legislation, which states: "The conferees intend to allow maximum flexibility for the use of funds under this Act to encourage schools to think of new ways to use technology to expand the learning day in the home, increase parental involvement with their children's education, and provide readily accessible professional development for teachers and staff."

Discussion: As reflected in the Improving America's Schools Act (IASA), the use of technology is certainly strongly encouraged. Because the design of Title I programs is a responsibility of schools and LEAs, however, the Secretary believes it is inappropriate to regulate on this issue.

Changes: None.

Comment: One commenter expressed concern that parental involvement is hardly addressed in the regulations. Specifically, because LEA and school-level parent involvement policies must be developed jointly with and agreed upon with parents, the commenter suggested that the terms "joint

development" and "agreement" be defined in the regulations. Two commenters also suggested that the regulations specify the manner in which these activities are to be carried out to ensure that (1) parents and school system personnel can understand concretely the steps for implementing the provisions; and (2) the parental involvement policies provide the SEA and LEA with sufficient information to enable them to determine that the policies are fully adequate to meet the statutory requirements. The commenters also recommended that the regulations make clear that the SEA and LEAs are responsible for ensuring that the parent involvement policies and processes are sufficient to meet Title I's parent involvement requirements.

One commenter suggested that the regulations provide additional clarification regarding school-parent compacts, specifying that the compact must be agreed upon, through informed consent, by parents as part of the school-level parent involvement policy. The commenter also asked that the regulations contain qualifying language providing that nothing in the school-parent compact section shall permit school officials to limit or deny families' rights to privacy and to determine the upbringing of their children. The commenter also suggested that the regulations connect parental involvement sections with other related sections so that parent involvement provisions are not used in isolation.

One commenter strongly supported the terms "broad-based" and "throughout the planning process" that are contained in the provisions related parental involvement in the development of the State plan and suggested the same language be added

in the regulations with respect to parent involvement in local plan and policy development. Another commenter recommended that the regulations outline a framework for parent involvement as described in section 1118 of Title I and, in addition to repeating the statute, expand on the newer parent involvement provisions such as "Shared Responsibilities for High Student Performance" and "Building Capacity for Involvement."

Discussion: The Secretary strongly agrees that parental involvement is essential for the education of children; the many detailed statutory provisions on parental involvement reflect this belief. Because the statute is very detailed, however, the Secretary does not believe additional regulations are necessary.

Changes: None.

Comment: Two commenters noted that the regulations did not contain complaint procedures. One commenter offered very detailed language to be added. The other commenter expressed concern that, without complaint procedures, many low-income parents would have nowhere to turn to attempt to redress individual and systemic wrongs, and also that LEAs and schools would receive a message that compliance is not important.

Discussion: The Secretary will be issuing in the near future proposed regulations implementing Title XIV of the ESEA and covering other general areas. These proposed regulations will contain provisions on complaint procedures that would apply to Title I.

Changes: None.

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